

IN RE: NICHOLAS HILL : APPEAL NO. C-090459
 : TRIAL NO. F07-1495Z
 :
 : *JUDGMENT ENTRY.*

Appellant Terri Zimmerman, the mother of Nicholas Hill, appeals from the juvenile court's adoption of a magistrate's decision designating appellee Robert Hill, Nicholas's father, as Nicholas's legal custodian.

Nicholas was born on May 8, 2001. His parents, Zimmerman and Hill, were not married at the time of his birth. They lived together in Zimmerman's house and raised Nicholas together for the next six years. Zimmerman then terminated her relationship with Hill, evicted him from her house, and limited his access to Nicholas.

Hill filed a petition in the juvenile court for custody of Nicholas. The matter was referred to a magistrate. After an extensive pretrial period that included a report filed by Nicholas's guardian ad litem and the magistrate's in camera interview with Nicholas, the magistrate conducted a trial. In four days of trial, the magistrate heard testimony from Hill, Zimmerman, the guardian ad litem, and six other witnesses.

The magistrate issued a detailed, ten-page decision that included factual findings and conclusions of law. The magistrate designated Hill as Nicholas's legal custodian and

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

his residential parent. The magistrate also ordered that Zimmerman was to have substantial time with Nicholas and included a detailed visitation plan in the decision.

Zimmerman timely filed an objection to the decision, asserting that the magistrate's decision was not supported by the evidence and that the magistrate had failed to properly consider Nicholas's best interests in reaching the decision. The juvenile court reviewed a complete record of the proceeding before the magistrate, overruled the objection, and adopted the magistrate's decision.

In a single assignment of error, Zimmerman contends that the juvenile court erred in granting custody of Nicholas to Hill. She reiterates her arguments before the magistrate and asserts that the magistrate and the juvenile court "fail[ed] to truly look at what was in the best interest of Nicholas, and [instead they] focus[ed] on what [they] perceived were [her] personality flaws."²

Under R.C. 2151.23(F) and 3109.04, the juvenile court is to decide to whom the care, custody, and control of a minor child shall be awarded, giving paramount consideration to the best interests of the child. Where a party objects to a magistrate's decision but, as here, does not adduce new evidence before the juvenile court,³ we review the juvenile court's ruling on objections, and its decision to adopt a magistrate's custody decision only for a showing of abuse of discretion.⁴ To abuse its discretion, the juvenile court must have acted unreasonably, arbitrarily, or unconscionably.⁵ If, however, the juvenile court's exercise of its discretion exhibited a sound reasoning process that supported its decision, this court will not disturb the decision.⁶

² Appellant's Brief at 13.

³ Juv.R. 40(D)(4)(d).

⁴ See *In re Kruthaupt*, 1st Dist. No. C-080405, 2009-Ohio-1372; see, also, *Miller v. Miller* (1988), 37 Ohio St.3d 71, 74, 523 N.E.2d 846.

⁵ See *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 87, 482 N.E.2d 1248.

⁶ See *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161, 553 N.E.2d 597.

This deference to the triers of fact is particularly appropriate, as the Ohio Supreme Court has determined that “[t]he discretion which a trial court enjoys in custody matters should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned. The knowledge a trial court gains through observing the witnesses and the parties in a custody proceeding cannot be conveyed to a reviewing court by a printed record. In this regard, the reviewing court in such proceedings should be guided by the presumption that the trial court’s findings were indeed correct.”⁷

In this case, the magistrate and the juvenile court each reviewed and applied the best-interest factors of R.C. 3109.04, including the effect of the custody shift on Nicholas. We note that, in her initial report to the magistrate, Nicholas’s guardian ad litem had not recommended custody for Hill but had merely indicated that Hill should receive additional visitation time. But the magistrate and the juvenile court were not bound by the guardian ad litem’s custody recommendation.⁸ This is particularly so where, as here, the magistrate had conducted her own extensive in camera interview with Nicholas shortly before issuing her decision.

The record reveals that Zimmerman and Hill were capable and loving parents, and that each had been effective in highlighting deficiencies in the other’s parenting skills. Throughout the proceeding, Nicholas had been consistent in his desire to spend more time with his father. And the juvenile court’s decision that Hill was better able to provide the stable environment and social interaction necessary for Nicholas’s development is well supported in the record. The assignment of error is overruled.

Therefore, the judgment of the juvenile court is affirmed.

⁷ *Miller v. Miller*, 37 Ohio St.3d at 74, 523 N.E.2d 846 (internal citations omitted).

⁸ See *In re Graham*, 167 Ohio App.3d 284, 2006-Ohio-3170, 854 N.E.2d 1126.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DINKELACKER and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 31, 2010
per order of the Court _____.
Presiding Judge